IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15129 of 2005
With
SPECIAL CIVIL APPLICATION No. 15130 of 2005
To
SPECIAL CIVIL APPLICATION No. 15131 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

B.K.KIKANI - Petitioner(s)

Versus

COMMISSIONER OF LABOUR STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR DG CHAUHAN for Petitioner No(s).:1.

MR HD DAVE AGP for Respondent No(s).:1-2.
NOTICE SERVED BY DS for Respondent No(s).: 3.
==========

CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 05/08/2005

ORAL JUDGMENT

1. Rule. Service of rule is waived by Shri H.D.Dave, learned AGP on behalf of the respondents Nos.1 & 2 – State Authorities.

2. As the common questions of law and facts arise in all three petitions, they are heard together and are being disposed of by this common judgment and order.

3. In these petitions, the respective petitioner has prayed for an appropriate writ, direction and order to quash and set aside the proceedings of Criminal Case No.1384 of 2005 pending in the Court of learned JMFC, Junagadh which came to be filed for alleged breach of award dated 23rd July, 1993 passed by the Industrial Tribunal, Rajkot passed in Reference (ITR) No.307 of 1987 and 314 of 1987.

4. Shri D.G.Chauhan, learned advocate appearing on behalf of the petitioners has vehemently submitted that the judgment and award dated 23.7.1993 passed by the Industrial Tribunal, Rajkot passed in Reference (ITR) No.307 of 1987 and 314 of 1987 are in fact quashed and set aside by the learned Single Judge of this Court qua regularization and so far as granting benefit of pay scale as ordered by the Industrial Tribunal came to be confirmed, against which, the University preferred Letters Patent Appeals before the Division Bench of this Court and the Division Bench of this Court confirmed the order passed by the learned Single Judge, against which, the petitioner

approached the Hon'ble Supreme Court of India by way of Civil Appeals and in the said appeal, the scheme was framed by the petitioner University which also came to be approved by the Hon'ble Supreme Court and the said judgment is reported in 2001 (3) SCC 574 and the judgment and awards passed by the Industrial Tribunal, Rajkot which is alleged to have been breached by the petitioner is not in existence and is in fact merged with the judgment and order passed by the Hon'ble Supreme Court in the aforesaid decision, and therefore, it is requested to allow the present special civil applications.

5. Shri H.D.Dave, learned AGP is not in position to dispute the aforesaid aspects, more particularly, in view of the fact that the order passed by the learned Single Judge of this Court, judgment and order passed by the Division Bench of this Court in Letters Patent Appeal and the judgment and order passed by the Hon'ble Supreme Court reported in 2001 (3) SCC 574 are annexed along with the present special civil applications.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is to be noted that the aforesaid criminal case came to be filed for alleged breach of the award dated 23.7.1993 passed by the Industrial

Tribunal, Rajkot passed in Reference (ITR) No.307 / 1987 and 314 of 1987. It appears from the record that the said judgment and awards passed by the Industrial Tribunal, Rajkot came to be challenged by the petitioner University before this Court by way of Special Civil Application No.2794 of 1994, 2795 of 1994 and 1731 of 1994 and the learned Single Judge of this Court (Coram : R. Balia, J., as he then was) by order dated 08-23-4-1997 allowed the said Special Civil Applications by quashing and setting aside the directions issued by the Industrial Tribunal, Rajkot issued in aforesaid Reference (ITR) No.307 and 314 of 1987 with regard to regularization, however, the relief to the extent the petitioner was directed to make payment to the workmen at the minimum of the pay scale was not disturbed. It also appears from the record that being aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge of this Court dated 23-4-97, in aforesaid three special civil applications, the petitioner University preferred Letters Patent Appeals being LPA Nos.1047, 1051 and 1095 of 1007. All the three Letters Patent Appeals along with their civil applications came to be dismissed. Thereafter, the petitioner University preferred Civil Appeals No.691 of 2001 with 692 / 94 and (CC No.2360) of 2001 before the Hon'ble Supreme Court in which the scheme was framed by the petitioner University for regularization of the daily rated

workers which came to be produced before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide its judgment and order dated 18.1.2001 approved the said scheme of the regularization and modified the judgment and award passed by the Industrial Tribunal to the aforesaid extent. Now in that view of the matter, so far as the judgment and award passed by the Industrial Tribunal, Rajkot dated 23.7.1993 passed in Reference (ITR) No.307 and 314 of 1987, which is alleged to have been committed breach by the petitioner for which the Criminal Complaints are filed, is not at all in existence and now the said judgment and award is already quashed and set aside and / or is modified by the Hon'ble Supreme Court. Under the circumstances, there is no question of committing any breach of the said judgment and award dated 23.7.1993 passed by the Industrial Tribunal, Rajkot in Reference (ITR) No.307 and 314 of 1987. Under the circumstances, Criminal Case which is filed for the alleged breach of the aforesaid judgment and award dated 23.7.1993 passed by the Industrial Tribunal, Rajkot in Reference (IT) No.307 and 314 of 1987 which are not in existence and as a consequences thereof, criminal case can not be permitted to be continued and hence, the same is required to be quashed and set aside.

7. For the reasons stated above, the proceedings of the Criminal Case No.1384 of 2005 pending in the court of learned JMFC, Junagadh is hereby quashed and set aside.

Rule, in each of the matter, is made absolute with no order as to costs.

[M.R.Shah, J.]

=kailash=